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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Interconnection Between Local Exchange	)	CC Docket No. 95-185
Carriers and Commercial Mobile Radio	)	
Service Providers	)	

DOCKET FILE COPY ORIGINAL

COMMENTS OF TELEPORT COMMUNICATIONS GROUP INC.

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March 4, 1996

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SUMMARY

The Commission is seeking to determine the appropriate compensation and interconnection arrangements that should apply between Commercial Mobile Radio Service ("CMRS") providers and Local Exchange Carriers ("LECs").

TCG owns or operates LECs in eleven states, and therefore will need to interconnect with CMRS providers under whatever conditions are determined in this proceeding.

The TCG LECs are ready and willing to interconnect with CMRS carriers under the conditions outlined in the Notice, provided that other LECs are also required to do so.

TCG has negotiated or litigated CLEC to Incumbent LEC interconnection and compensation issues in many states. Based on that experience, TCG strongly supports the Commission's conclusion to adopt bill and keep for CMRS-LEC interconnection. Bill and keep is recognized in the Telecommunications Act of 1996 as an appropriate reciprocal compensation practice, and it is increasingly the method chosen for interconnection between new competitive LECs like TCG and the dominant LECs.

The Commission should, therefore, promptly adopt bill and keep as its interim interconnection standard. The Commission

need not, at this time, specify a long term interconnection standard. Rather, it should first gain experience with an interim arrangement which is fair, reciprocal and economically efficient. Based on that experience, the Commission can then better develop an appropriate long term approach.

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Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers	)	CC Docket No. 95-185

To: The Commission

COMMENTS OF TELEPORT COMMUNICATIONS GROUP INC.

Teleport Communications Group Inc. ("TCG") hereby offers the following comments in response to the Commission's Notice of Proposed Rulemaking in the above-captioned proceeding.[1] TCG's Comments are organized in the format specified in the NPRM.[2]

1. Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers; Equal Access and Interconnection Obligations Pertaining to Commercial Mobile Radio Service Providers, CC Docket Nos. 95-185 and 94-54, FCC 95-505, released January 11, 1996 ("NPRM"); Order and Supplemental Notice of Proposed Rulemaking, FCC 96-61 (released February 16, 1996) ("Supplemental NPRM").

2. *See* NPRM at n. 171.

TELEPORT COMMUNICATIONS GROUP INC.
INITIAL COMMENTS
CC Docket No. 95-185
MARCH 4, 1996

I. GENERAL COMMENTS.

The Commission is seeking to determine the appropriate compensation and interconnection arrangements that should apply between Commercial Mobile Radio Service ("CMRS") providers and Local Exchange Carriers. TCG owns or operates Competitive Local Exchange Carriers ("CLECs") in eleven states,[3] and therefore will need to interconnect with CMRS providers under the conditions determined in this proceeding.

TCG is ready and willing to interconnect with CMRS providers under the conditions outlined in the NPRM, provided that all LECs are required to do so.

TCG has negotiated or litigated CLEC to Incumbent Local Exchange Carrier ("ILEC") interconnection and compensation issues in a number of states. Based on that experience, TCG strongly supports the Commission's conclusion to adopt bill and keep as the interim compensation arrangement for CMRS-LEC interconnection. TCG would also suggest that the Commission need not address long term compensation today, but would be better

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3. TCG subsidiaries or affiliates are authorized to operate as local exchange carriers in New York, Massachusetts, Connecticut, California, Illinois, Florida, Wisconsin, Michigan, Washington State, Texas, and Pennsylvania. Another TCG affiliate has an application pending in Arizona for LEC authority.

served by gaining experience under bill and keep and then determining the best long term arrangement.

II. COMPENSATION FOR INTERCONNECTED TRAFFIC BETWEEN LECs AND CMRS PROVIDERS' NETWORKS.

A. COMPENSATION ARRANGEMENTS.

1. EXISTING COMPENSATION ARRANGEMENTS.

The Commission "tentatively concludes" that bill and keep is an appropriate interim CMRS-LEC interconnection arrangement.[4] The Commission notes that several states have adopted bill and keep for CLEC-ILEC interconnection.[5] Bill and keep is also the most commonly used method in the telecommunications industry for ILEC-ILEC interconnection and compensation.[6]

TCG would point out that the Commission's list of states where bill and keep (or its equivalent) is used for CLEC-ILEC interconnection is incomplete, and bill and keep type arrangements are in fact the predominant form of interconnection arrangement nationally for CLEC-ILEC interconnection.

The list of jurisdictions where bill and keep (or the equivalent) is used is long and growing longer.

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4. NPRM at paragraph 61.

5. The Commission cites California, Connecticut, Texas and Pennsylvania as states which have adopted bill and keep. NPRM at paragraph 60.

6. *See, e.g.*, City Signal Inc., 159 PUR 4th 532 (1995) ("LECs in Michigan does not compensate each other for terminating local or EAS calls. Instead, they have a "bill and keep" arrangement...").

In California, the Commission has required bill and keep for the first year of competition.[7]

In Oregon, the Commission just a few weeks ago required that bill and keep be used for two years.[8]

In Washington State, the Commission required bill and keep as its initial interconnection standard.[9] The Washington decision is particularly important, because it engages in an extended analysis of the adverse market consequences of usage sensitive interconnection arrangements, and the benefits of bill and keep.

In Texas,[10] bill and keep is the default form of mutual compensation for the first nine months after the date on which the first call is terminated between CLECs and ILECs.

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7. California Public Utilities Commission, Order Instituting Rulemaking on Commission's Own Motion into Competition for Local Exchange Service; Order Instituting Investigation on the Commission's Own Motion into Competition for Local Exchange Service, Decision No. 95-07-054, (July 24, 1995), Dkt. Nos. R.95-04-043 and I.95-04-044.

8. Oregon Public Utilities Commission, Applications of Electric Lightwave, Inc. MFS Intelenet of Oregon, Inc., and MCI Metro Access Transmission Services, Inc., Order No. 96-021 (Jan. 12, 1996), Dkt. Nos. CP-1, CP-14, and CP15.

9. Washington Public Utilities Commission, Fourth Supplemental Order Rejecting Tariff Filings and Ordering Refiling; Granting Complaints, in Part, (Oct. 31, 1995), Dkt. No. UT-941464.

10. Texas' new telecommunications law, enacted in 1995, provides that for the first nine months of a competitive local telephone company's actual operations the reciprocal compensation method shall be bill and keep. *See* Tex. Rev. Stat. §3.458(c)(1995).

In Connecticut, the Commission required bill and keep for up to eighteen months, subject to a future evaluation of the relative balance of traffic.[11]

In Arizona, the Commission has issued a recommended decision which would implement bill and keep for three years.[12]

In Pennsylvania, the Administrative Law Judge recommended the use of bill and keep,[13] and the Commission is continuing to consider the issue, with ILECs and CLECs interconnecting pursuant to escrow agreements in the meantime.

In Michigan, the Commission adopted a usage-sensitive compensation rate, but provided that the rate would not be imposed unless traffic was out of balance by more than 5%.[14]

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11. DPUC Investigation into the Unbundling of the Southern New England Telephone Company's Local Telecommunications Network, Docket No. 94-10-02.

12. Arizona Corporation Commission, Rules for Telecommunications Interconnection and Unbundling, Order, Decision No. 59483, (Jan. 11, 1996), Dkt. No. R-0000-96-001.

13. The Administrative Law Judge heard testimony on a variety of interim interconnection methods, including usage sensitive methods. The Judge found "bill and keep" to be the most efficient and simplest interim interconnection method. See Application of MFS Intelenet of Pennsylvania, Incorporated for a certificate of public convenience and necessity in order to operate as a local exchange telecommunications company in the areas served by Bell Telephone Company of Pennsylvania within the Philadelphia and Pittsburgh LATAs, and to establish specific policies and requirements for the interconnection of competing local exchange networks, Pennsylvania Public Utility Commission Docket No. A-310203F0002 (Initial Decision, June 6, 1995).

14. City Signal Inc., 159 PUR 4th 532 (1995).

In Florida, TCG and BellSouth have a negotiated interconnection agreement that functions essentially like a bill and keep arrangement.[15]

By adopting bill and keep, the Commission will not only be adopting the same type of interconnection that has been favored for decades by the incumbent LECs in their own interconnections, but will be following the predominant trend in the industry for CLEC-ILEC type arrangements. It is also a trend echoed in the Telecommunications Act of 1996 ("1996 Act"), which specifically authorizes bill and keep arrangements.[16]

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15. In Florida, TCG and BellSouth have agreed to a reciprocal compensation arrangement which functions as the equivalent of bill and keep. Under this arrangement, the maximum amount of traffic that can be subject to interconnection payments from one carrier to another carrier is 5% of the lower amount of traffic passed between the two companies. For example, if in a given month one carrier passed 100,000 minutes of use to the other carrier, which in turn passed 200,000 minutes back to it, the amount of traffic subject to compensation would be limited to 5,000 minutes (5% of 100,0000 minutes). While the BellSouth arrangement is not optimal because it still requires some measurement of traffic, and therefore is not as economically efficient as it should be, the net effect of the cap on payments is to essentially mimic a bill and keep arrangement.

16. *See* 1996 Act, Section 252.

II. A. 2. GENERAL PRICING PRINCIPLES.

In evaluating any proposed mutual compensation arrangement, the Commission must ensure that the arrangements do not have an undesirable impact on the competitive operation of the market. In that regard, compensation arrangements that have the least impact on the conditions in the retail market are to be favored. More generally, the Commission should evaluate each compensation proposal to ensure that it will:

- Allow for economically viable competition;
- Be administratively efficient;
- Minimize competitive distortions; and
- Minimize carrier conflicts.

Non-usage sensitive compensation arrangements such as bill and keep -- as opposed to usage sensitive compensation arrangements -- best satisfy these objectives, as explained below.

ECONOMICALLY VIABLE COMPETITION

In developing an economically viable compensation mechanism, the Commission must consider the significant imbalance in the "mutual dependence" of CMRS providers and the ILECs. Even if a particular CMRS provider succeeded in attracting customers that equaled 5% of the subscriber lines served by the ILEC, virtually all of the local calls made by the CMRS provider's customers will terminate on the ILEC's network. Conversely, only a tiny percentage of calls made by the incumbent's customers will terminate on the CMRS provider's network. Clearly, any imbalance in compensation payments will be insignificant to the ILEC, but could be devastating to the CMRS provider. For example, under a usage sensitive compensation arrangement, an imbalance in traffic can lead to (potential high) payments between the carriers. Since very little of the ILEC's traffic will be subject to the compensation agreement, the impact of an imbalance on the total profitability of the ILEC would be essentially invisible. By contrast, since virtually all of the CMRS provider's traffic will be subject to the compensation agreement, the impact on the CMRS provider could well be substantial. Bill and keep not only eliminates such financial risks, but also makes it more likely traffic will be balanced, and thus best ensures that there is an economically viable opportunity for competition to develop.

ADMINISTRATIVE EFFICIENCY

Bill and keep is certainly the simplest arrangement to administer and bill. It avoids the need for the construction of complicated usage measurement and billing systems which are required where per-minute charges are involved. Evidence in some states has suggested that the costs of the billing systems to assess such per minute charges roughly equal the costs of the interconnection itself, meaning that the decision to use a per-minute charge will double the costs of the interconnection service.[17] Such an expenditure provides no public benefit, and will certainly make the costs of basic local services higher than they should be.[18]

MINIMIZE COMPETITIVE DISTORTIONS

Bill and keep allows service providers to design their local service offerings without being tied to or constrained by their interconnection arrangements. A usage sensitive interconnection arrangement, by contrast, will inhibit a CMRS carrier or a CLEC from offering flat rate options since the carrier will face a real risk of losing money on such customers. The Washington Utilities and Transportation Commission recognized this very point in determining that a bill and keep arrangement was preferable. It noted that a measured-use compensation structure could undermine the state's policy of providing a flat-rated local service option, and thus could represent a price squeeze that could "price new entrant ALECs out of the market for flat-rated local service" and thus "throttle the nascent competition

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17. *See* Washington Utilities and Transportation Commission, Fourth Supplemental Order Rejecting Tariff Filings and Ordering Refiling and Granting Complaints in Part, Docket No. UT-941464, issued October 31, 1995; Oregon Public Utilities Commission, Applications of Electric Lightwave, Inc. MFS Intelenet of Oregon, Inc., and MCI Metro Access Transmission Services, Inc., Order No. 96-021 (Jan. 12, 1996), Dkt. Nos. CP-1, CP-14, and CP15.

18. *See* WUTC Decision (the additional costs associated with measured use measuring and billing could lead to increased flat-rate charges for local service).

in the local exchange market."[19] The Commission's CMRS-LEC interconnection policy should not preclude CMRS carriers from offering a rate arrangement -- flat rated charges -- which has proven popular with consumers in the local exchange services market. A usage sensitive arrangement would be preclusive in its effect, while bill and keep would not.

Usage sensitive interconnection arrangements can also distort the market by creating incentives for non-economic calling or network configurations, motivated solely by the desire to take advantage of inefficiencies or arbitrage opportunities inherent in the usage sensitive compensation arrangement. For example, a usage based compensation charge can create similar arbitrage opportunities as are encountered in the international telecommunications marketplace, where "call back" services exist solely to take advantage of artificial pricing conditions in the marketplace. Usage based interconnection arrangements could create incentives to artificially stimulate outgoing calling (where the usage based interconnection charge exceeds the retail rate), just as high international calling rates create incentives to engage in call back arrangements. High usage based charges could also distort the market by creating a "land rush" for customers with high incoming call volumes, in order to obtain the

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19. *See* Washington Utilities and Transportation Commission, Fourth Supplemental Order Rejecting Tariff Filings and Ordering Refiling and Granting Complaints in Part, Docket No. UT-941464, issued October 31, 1995, at 28.

associated interconnection revenues. With usage-insensitive compensation arrangements like bill and keep, such arbitrage opportunities do not exist, and consequently interconnection charges cannot distort the market.

MINIMIZE CARRIER CONFLICTS

An issue related to administrative simplicity is whether the compensation arrangement will minimize conflicts between the carriers. To the extent that the compensation arrangement creates tensions between the affected carriers, and economic "win-lose" situations, it will engender conflicts, which will inevitably lead to demands for regulatory intervention. To the extent that the reciprocal compensation arrangement minimizes the potential for carrier conflicts, it will reduce the potential demands on the Commission's resources to act as a referee or arbitrator, while simultaneously reducing the burden on small carriers to commit time, energy and scarce resources to the economically unproductive exercise of "battling" the ILEC over its interconnection charges.

Any usage based compensation arrangement will inevitably create disputes between the carriers, as to whether the traffic measurements are accurate, whether the carriers have properly rendered bills, and whether the rates are being applied correctly. By contrast, a bill and keep arrangement eliminates billing and monitoring requirements entirely, and with them the potential for carrier disputes.

Bill and keep, by eliminating the potential for carrier conflicts, actually does much more. Bill and keep places the marketplace emphasis where it belongs -- it tells local service providers of all stripes to build revenues by providing good service to their retail customers, since they will be the primary source of their local revenues. In contrast, usage sensitive reciprocal compensation arrangements will place the emphasis on obtaining revenues from competitors through "gaming" the regulatory process, encouraging economically inefficient services or arrangements simply to reap windfalls from interconnection revenues, or using arbitrage arrangements to artificially stimulate the production of incoming traffic to create uneconomic (but valuable) interconnection revenues.

II. A. 3. PRICING PROPOSALS (INTERIM, LONG TERM, SYMMETRICAL)

The NPRM proposes several alternatives, in addition to bill and keep, as interim interconnection arrangements, and also seeks comment on possible long term arrangements. TCG offers the following comments on certain of the issues raised by the NPRM.[20]

CMRS-ILEC INTERCONNECTION IMPOSES FEW IF ANY "ADDITIONAL" COSTS ON THE ILEC NETWORK.

The basis of much of the Commission's discussion of usage sensitive compensation arrangements -- and indeed its discussion of compensation in general -- is an unstated premise that CMRS providers will impose "additional costs" on the ILEC network.[21] It is in fact entirely possible that CMRS providers and CLECs

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20. TCG supports the Commission's proposal to require that reciprocal compensation arrangements be symmetrical, although in the case of bill and keep symmetry in interconnection charges should be automatic.

21. The term "additional cost" is used in the Telecommunications Act of 1996 in defining the appropriate pricing principle for reciprocal compensation. See Section 252(d)(2)(costs should be determined "on the basis of a reasonable approximation of the additional costs of terminating such calls."). In that regard, the Act specifically recognizes bill and keep as an acceptable and appropriate mechanism, and specifically allows "arrangements that afford the mutual recovery of costs through the offsetting of reciprocal obligations, including arrangements that waive mutual recovery (such as bill-and-keep arrangements." *Id.*

will impose few if any additional costs on the ILEC. Under such conditions, the use of bill and keep is not simply a "convenient" interim arrangement, but rather is a logical and appropriate interconnection principle as well.

Competition -- whether wireless or wireline -- is likely to result, for the most part, in the diversion or rearrangement of existing calling. The fact that a customer has a wireless telephone or a telephone provided over a CLEC's facilities does not mean that customer now knows more people to call -- it just means the customer has more options from which to choose how, when and from where to call the people they are likely to talk with anyway. Nor does the fact that a customer has a wireless phone or a telephone provided by a CLEC necessarily mean he or she is going to call different telephone numbers than before, or even necessarily place more calls than before. Unless callers do in fact make substantially more calls, the fact that the calls are now originated by a CMRS provider rather than on a "wireline" basis through the ILEC does not impose any additional costs on the ILEC's network.

There are several reasons that no additional costs would be imposed on the ILEC due to CMRS interconnection. One important reason has to do with the nature of CMRS traffic. Today, CMRS services tend to experience peak period calling during the "drive time" hours of the day -- early morning and evening -- rather than during the normal business day peak calling hours. Thus

CMRS calling is less likely to occur during peak periods in the first place.

A second reason that CMRS calling should not impose additional costs on the ILEC has to do with the way the ILEC's network is engineered. ILEC end offices are designed to handle the peak busy hour traffic load (both originating and terminating) of the subscribers served by that office. If those subscribers now place calls to or receive calls from customers served by CMRS providers, the fact that those calls now come from outside the ILEC's network does not impose any additional costs on the ILEC's end offices.[22] That is because the ILEC's end office is already sized to serve the expected busy hour demands of those subscribers, and unless the existence of CMRS providers substantially changes those calling patterns to create a new and higher peak calling period -- an unlikely circumstance due to the "drive time" characteristics of CMRS traffic -- the ILEC will not incur any additional costs in serving those customers.

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22. For example, assume that an ILEC's end office now has 200 DS1 ports to handle the incoming and outgoing traffic of its users. Certainly the placing of calls to or from customers served by CMRS or CLEC providers to or from the ILEC's customers may require that some of those 200 ports be connected to the CMRS/CLEC networks. That does not, however, mean that the ILEC will experience any increase in costs. Unless the CMRS/CLEC traffic produces a significant change in the busy hour profile at the ILEC end office, the ILEC will not need to add any trunks to that office. Since call completion services are incurred in relationship to the installation of new capacity (not based on usage), the ILEC has not had to spend any additional capital at that end office, and hence has not incurred any additional costs. Assuming that the relative peak load at the office is not materially affected by the CMRS/CLEC traffic, the existing 200 DS1 ports will be sufficient to handle the traffic load.

Indeed, CMRS networks (and CLEC networks as well) are unlikely to impose *additional* costs on the ILEC -- they are in fact more likely to *reduce* the ILECs' costs. In a monopoly situation, 100% of the local calls will be handled entirely on the network of the ILEC -- in other words, the ILEC will generally utilize two of its end office switches to handle every call. Each time a CMRS provider or CLEC brings a customer onto its network, that reduces the system demands on the ILEC, since now another party's local switch will handle half of every call to or from that customer.

The demands on ILEC networks will in fact decline even further in the future. As CMRS and CLEC customer bases grow, a greater proportion of the calls of those customers will be completed *entirely* on those non-ILEC networks, through direct connections between those alternative networks. That traffic need never touch the ILEC's network. Rather than imposing "additional" costs on the ILEC network, that traffic will free up ILEC investment in the peak busy hour so that the network can handle new, incremental traffic without the investment of new capital by the ILEC.

Accordingly, when the impact of CMRS and CLEC competition on ILECs is considered, it is clear that bill and keep is the optimal solution. No other solution is as administratively simple and economical to implement, as readily avoids the possibility that the ILEC will abuse its position in the marketplace, and recognizes that the "additional" costs imposed on ILECs by CMRS providers are likely to be small if not nonexistent.

THE COMMISSION SHOULD NOT IMPLEMENT "PEAK PERIOD" OR OTHER USAGE SENSITIVE CHARGES.

The Commission questions whether a "peak period" pricing system could be implemented, and expresses practical concerns about how the peak could be determined, whether a "peak" could last all day, how peak minutes would be identified and billed, and related issues.[23] The Commission also discusses other usage-sensitive compensation possibilities.[24] All of these alternatives suffer from the fact that they do not recognize the essential fact that network costs for call completion are not related to usage, but are based on network capacity.

Any discussion of "peak period" demand must focus on the "peak busy hour," as that is the basis upon which engineers design the network facilities that must be in place to satisfy the expected demand load. More specifically, engineers design facilities so that only a small proportion of calls (typically 1%) are likely to be blocked at the peak busy hour. The exact time of day for that peak demand can vary from day to day, week to week, or season to season. From an engineering perspective

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23. NPRM at paragraph 45.

24. The Commission discusses Ramsey pricing approaches, LRIC based pricing, so-called "efficient component pricing rules," and rate ranges. NPRM at paragraphs 47-55.

the exact time of day of the peak period is not particularly relevant -- what is important is the size of the peak, wherever it occurs, and so long as there is no material change in that peak load the facilities at the end office do not need to be re-engineered.

Contrary to the Commission's assumptions, therefore, adoption of a compensation arrangement based on peak period principles does not suggest in any way that a usage sensitive arrangement is required. Nor do the Commission's suggestions for various usage sensitive arrangements (which largely appear to ignore peak/off peak characteristics) comport with the actual way costs are incurred in the network. To complete calls between networks, the two companies must cooperate in designing their interconnected networks to handle the expected peak load, as they jointly see it, while not exceeding the permissible levels of blocking. And because peak period demand drives the installation of fixed cost facilities, it is not a "usage sensitive" characteristic that requires or suggests the need for a usage sensitive compensation approach. Accordingly, no usage sensitive compensation arrangement, including peak period usage based rates, will result in a cost-causative arrangement.

THE COMMISSION SHOULD NOT ATTEMPT TO USE AN "AVERAGE" OF CLEC-ILEC INTERCONNECTION RATES

The Commission suggests that one possible interim rate might be based on the "average" usage sensitive interconnection rate adopted in CLEC-ILEC negotiations.[25] The Commission states that the "range" of interconnection rates is between .5 cents/minute and 2.4 cents/minute, with a median of one cent per minute, and therefore offers that rate as a possible interim CMRS-ILEC interconnection charge.

The Commission must not consider such an approach for several, unarguable reasons. First, the "range" of rates in question is not a fixed target -- in the few weeks since the NPRM was issued new usage sensitive rates have been introduced that completely change the mathematics of the Commission's calculation, even if one accepted that it was valid to begin with.

More importantly, the Commission errs in setting the bottom of the range. The lowest compensation rate is not .5 cents/minute as the Commission suggests (a level that itself has already been rendered obsolete by the Maryland Commission's recent decision), but zero -- the effective rate in bill and keep. Moreover, bill and keep is the method of choice in many large states (California and Texas being two examples) and so the weighted average would be much closer to zero.

The top of the Commission's range (2.4 cents/minute in Maryland) is also no longer valid. Maryland has dropped that interconnection price in favor of a rate of .3 cents/minute at the end office and .5 cents/minute at the tandem -- so that the

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25. *See* NPRM at paragraph 74.

state at the apparent top of the Commission's range is now the lowest usage sensitive rate (other than bill and keep). Accordingly, the Commission's attempt at developing a "median" interconnection rate is already outdated, fails to take bill and keep into account, and is essentially unworkable.